JOHN J. SANSONE, County Counsel (State Bar No. 103060)
County of San Diego
By RICKY R. SANCHEZ, Senior Deputy (State Bar No. 107559)
1600 Pacific Highway, Room 355
San Diego, California 92101-2469
Telephone: (619) 531-4874

Attorneys for Defendant Julie Smith

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CARMEN POWELL, Plaintiff, v. CITY OF CHULA VISTA; CHULA VISTA POLICE DEPARTMENT; DET. RUTH HINZMAN; AGT. ANDERSON; AGT. OYOS; SGT. CERVANTES; AND PERSON ENTITIES UNKNOWN; COUNTY OF SAN DIEGO AND SAN DIEGO COUNTY PROTECTIVE SERVICES WORKERS JULIE SMITH, NADIA NAJORS, MEGAN PETFINGER, REBECCA SLADE, SOFIA SANCHEZ, LIZA GARCIA, DOES 1 to 100, Defendants.	No. 07-cv-1836-JAH(JMA) MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT Date: August 18, 2008 Time: 2:30 p.m. Dept.: 11 - Courtroom of the Honorable John A. Houston Trial Date: None

STATEMENT OF THE CASE

Plaintiff Carmen Powell alleges in her amended complaint that she was arrested in her home by the Chula Vista Police Department on charges of domestic violence and that her children were then removed and placed in the custody protective services social workers. (First Amended Cmplt. FAC p.4 .) Plaintiff complains that false evidence was used in Superior Court Juvenile division dependency proceedings to effect the children's removal. (FAC pp. 10-11.)

///

Plaintiff sues moving defendant social worker Julie Smith, but Smith is not alleged to have been involved with plaintiff's arrest, or in the removal of the children from the home, or even that Smith commenced the dependency proceedings pertaining to plaintiff's children. As to Smith, the gist of plaintiff claim against her is that Smith gave perjured testimony and false evidence in the juvenile court dependency proceedings by mischaracterized the content of one of the child's interview with authorities, which evidence was against plaintiff's interests. (FAC p. 2.)

Plaintiff states that she was represented by an attorney, participated in the juvenile court dependency proceedings, and under advise from her attorney, she stipulated to a dependency judgment with findings that a daughter gained weight post-removal, there was a lock on the refrigerator in the home, there was no kitchen table in the home, that there were altercations between herself and husband. (FAC p. 13.) Shortly after she entered into the stipulated judgment, new and further dependency petitions (under Welfare and Institutions Code section 342) that related to child mistreatment were filed that plaintiff thought were foreclosed by the stipulated judgment. (FAC. p. 13.) Plaintiff further alleges dissatisfaction with her attorney in the dependency proceedings, the children's attorney, and the judge who presided over the proceedings. (FAC p. 9, 10, 14.)

The amended complaint contains no express prayer, but appears to seek this court's involvement to effect the return of her children. Plaintiff does not allege that the dependency proceedings have resolved in her favor or that any of the juvenile court orders or judgments have been over turned on reconsideration or appeal. Rather, plaintiff contends that the juvenile court dependency proceedings were in violation of her constitutional rights because no abuse ever occurred in her home and because the adverse rulings against her resulted from social workers, medical providers and others providing the court with false testimony and false documentation.

At the hearing on defendant's motion to dismiss plaintiff's original complaint, this court requested defendant, in connection with any subsequent motion to dismiss, provide the court with references to the juvenile court record that would pertain to the amended complaint plaintiff was allowed time to construct. Accordingly, a more complete description of the juvenile court dependency proceedings, orders and judgments are submitted under separate cover upon under seal.

I

THE COMPLAINT SHOULD BE DISMISSED BECAUSE UNDER THE ROOKER-FELDMAN DOCTRINE, THIS COURT LACKS JURISDICTION TO REVIEW STATE COURT ORDERS AND JUDGMENTS CONCERNING JUVENILE DEPENDENCY AND CUSTODY MATTERS

In alleging false evidence was used to obtain dependency orders that removed children from plaintiff's custody, plaintiff is seeking to have this court re-weigh and re-evaluate the evidence and arguments on which the dependency orders were based with the objective of having this court overturn the Superior Court's orders.

Under the Rooker-Feldman doctrine lower federal courts have no jurisdiction to review state court decisions. *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415 (1923); *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 482 (1983); *Busch v. Torres,* 905 F.Supp. 766, 771 (C.D.Cal. 1995).

In *Worldwide Church of God v. McNair*, 805 F.2d 888 (9th Cir. 1986), Worldwide brought a section 1983 action against the ex-wife of one of the church leaders who had obtained a state court defamation judgment against Worldwide. Worldwide claimed that the state court judgment violated Worldwide's constitutional due process rights because the statement that formed the basis of the defamation verdict was a religious statement protected by the First Amendment. In response to a motion to dismiss, the district court chose to abstain under authority of *Younger v. Harris,* 401 U.S. 37, 49-53 (1971). Worldwide appealed the district court's abstention order. On appeal the Ninth Circuit Court of Appeals held that the district court should actually have dismissed outright under the Rooker-Feldman doctrine:

> The United States District Court, as a court of original jurisdiction, has no authority to review the final determinations of a state court in judicial proceedings. 28 U.S.C. § 1257 [**6] provides that the proper court in which to obtain such review is the United States Supreme Court. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476, 75 L. Ed. 2d 206, 103 S. Ct.

1303 (1983). See Atlantic Coast Line R. Co. v. Locomotive Engineers, 398 U.S. 281, 296, 26 L. Ed. 2d 234, 90 S. Ct. 1739 (1970) (lower federal courts may not sit in review of state courts' decisions); Rooker v. Fidelity Trust Co., 263 U.S. 413, 415-16, 68 L. Ed. 362, 44 S. Ct. 149 (1923) (district courts may not exercise appellate jurisdiction over state courts); **Robinson v. Ariyoshi, 753 F.2d 1468, 1471 (9th Cir. [*891] 1985) (federal court has no jurisdiction over federal constitutional issues if consideration would require a review of the allegations underlying the state judicial decision)** [emphasis added]**,** vacated on other grounds, 477 U.S. 902, 106 S. Ct. 3269, 91 L. Ed. 2d 560 (1986); Texaco v. Pennzoil Co., 784 F.2d 1133, 1141-42 (2d Cir.) (inferior federal courts may not act as appellate tribunals over state courts) prob. juris. noted, 477 U.S. 903, 106 S. Ct. 3270, 91 L. Ed. 2d 561 (1986). [**7]

This doctrine applies even when the challenge to the state court decision involves federal constitutional issues. Feldman, 460 U.S. at 484-86 (quoting Doe v. Pringle, 550 F.2d 596, 599 (10th Cir. 1976), cert. denied, 431 U.S. 916, 97 S. Ct. 2179, 53 L. Ed. 2d 227 (1977), for the proposition that "this rule applies even though, as here, the challenge is anchored to alleged deprivations of federally protected due process and equal protection rights"); Robinson, 753 F.2d at 1472. The rationale for this rule is that state courts are as competent as federal courts to decide federal constitutional issues. Allen v. McCurry, 449 U.S. 90, 105, 101 S. Ct. 411, 66 L. Ed. 2d 308 (1980) (stating that nothing in the legislative history to § 1983 supports the argument that a person claiming a federal right should have an unrestricted opportunity to relitigate in federal court issues already decided in state court; state courts have an obligation and the ability to uphold federal law); Huffman v. Pursue, Ltd., 420 U.S. 592, 611, 43 L. Ed. 2d 482, 95 S. Ct. 1200 (1975) (rejecting the argument [**8] that "state judges will not be faithful to their constitutional responsibilities"). In addition, any other rule would result in a waste of judicial resources and unnecessary friction between state and federal courts. See Atlantic Coastline , 398 U.S. at 286; Pennzoil, 784 F.2d at 1142. *Worldwide Church of God v. McNair*, 805 F.2d 888,890-91 (9th Cir. 1986).

In *Heck v. Humphrey*, 512 U.S. 477 (1994), the U.S. Supreme Court rearticulated the Rooker doctrine in the context of a section 1983 damages case arising out of a criminal case. The Supreme Court held that a section 1983 lawsuit for damages whose success depends on establishing that the underlying judgment of conviction is wrong cannot be maintained while the judgment stands. *Heck v. Humphrey*, 512 U.S. at 484-486. *Heck v. Humphrey,* teaches that plaintiff cannot proceed with her lawsuit in this court because she cannot satisfy a fundamental

prerequisite element of her claim - that is that the Superior Court juvenile dependency proceedings terminated in her favor. In fact she pleads the exact contrary.

If plaintiff objects to the juvenile court's dependency proceedings and judgment, she must present those objections to the Superior Court Juvenile division or the California State

Court of Appeals. Her lawsuit in this the district court is an improper collateral attack on the juvenile court's proceedings. A losing party cannot move to a new forum to contest the loss, but must present his argument to the court that rendered the judgment. See *Harris Trust & Savings Bank v. Ellis*, 810 F.2d 700, 705-706 (7th Cir. 1987) [After a probate court approved sale of stock held in a trust, an estate executor brought a SEC and RICO action against trust fiduciaries claiming fraudulent stock valuation in the probate proceedings. The federal court dismissed the action finding that the disposition of the probate court was binding, and that the probate court's judgment was not precluded by the claim of fraud because only the probate court as the rendering court could set aside the judgment that approved the sale.] "Once a court issues an order, the collateral bar doctrine prevents the loser from migrating to another tribunal in search of a decision he likes better." (Citations omitted.) *Homola v. McNamara*, 59 F.3d 647, 651 (7th Cir. 1995).

In the present matter, plaintiff is aggrieved of the judgment taken against her in the Superior Court juvenile dependency proceedings. She alleges that it resulted from the admission of false evidence against her and the services of her own attorney in the dependency proceedings. Yet, the Superior Court's orders and judgments have not been set aside, or overturned. The gravamen of plaintiff's amended complaint is a challenge to the state Superior Court's dependency orders and judgments. Plaintiff is actually asking this district court to re-weigh the evidence on which the judgment was taken against her in the Superior Court. This is impermissible.

> Under the Rooker-Feldman doctrine, this Court is precluded from reviewing that judgment and its execution. "Review of state court decisions may only be conducted in the United States Supreme Court. Lower federal courts may not review such decisions." Partington v. Gedan, 961 F.2d 852, 864 (9th Cir.) cert. denied, 506 U.S. 999, 113 S. Ct. 600, 121 L. Ed. 2d 537 (1992) (citing District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476, 482, 486, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413, 416, 44 S. Ct. 149, 68 [**9] L. Ed. 362 (1923). The Rooker-Feldman doctrine is a jurisdictional bar that prevents federal court review even if the complaint alleges that the state court's action was unconstitutional. Feldman, 460 U.S. at 486; Allah v. Superior Court, 871 F.2d 887, 890-91 (9th Cir. 1989) (barring Section 1983 action challenging state court decision based on alleged violations of due process and equal protection); Worldwide Church of God v. McNair, 805 F.2d 888, 893 (9th Cir. 1986) (barring Section 1983 action challenging state court decision on First Amendment grounds).

Busch v. Torres, 905 F.Supp. at 771.

Plaintiff should not be allowed to use this court as a forum to contest the dependency proceedings. Plaintiff's amended complaint must be dismissed.

II

THE AMENDED COMPLAINT SHOULD BE DISMISSED UNDER RULE 12(b)(6) BECAUSE IT IS SUBJECT TO A CLAIM PRECLUSION DEFENSE

A claim preclusion defense may be raised by a Federal Rule of Civil Procedure, rule 12(b)(6) motion to dismiss for failure to state a claim. *Stewart v. United States Bancorp*, 297 F.3d 953, 956 (9th Cir. 2002) [12(b)(6) motion to dismiss based on res judicata granted].

Under the Full Faith and Credit Clause, 28 U.S.C. § 1738, "a federal court must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered." *Migra v. Warren City School District Board Of Education*, 465 U.S. 75, 81 (1984). The "judgment in the first action is deemed to adjudicate for purposes of the second action every matter which was urged, and every matter which might have been urged, in support of the cause of action or claim in litigation." *Hulsey v. Koehler*, 218 Cal.App.3d 1150, 1157 (1990).

The preclusive effect of prior orders is also provided for in California Code of Civil Procedure § 1908(a):

> "(a) The effect of a judgment or final order in an action or special proceeding before a court or judge of this state, or of the United States , having jurisdiction to pronounce the judgment or order is as follows:
>
> . . . . . . (1) In case of a judgment or order against a specific thing, or in respect to the probate of a will, or the administration of the estate of a decedent, or in respect to the personal, political, or legal condition or relation of a particular person, the judgment or order is conclusive upon the title to the thing, the will, or administration , or the condition or relation of the person.
>
> . . . . . . (2) In other cases, the judgment or order is , in respect to the matter directly adjudged, conclusive between the parties and their successors in interest . . . litigating for the same thing under the same title and in the same capacity, provided they have notice, actual or constructive, of the tendency of the action or proceeding."

Plaintiff's federal lawsuit arises out of the same transaction and occurrences she alleges was involved in the Superior Court dependency proceedings.

> "The doctrine of res judicata is intended to prevent multiple litigation causing vexation and expense to the parties and wasted effort and expense in judicial administration by precluding parties from relitigating issues they could have raised in a prior action concerning the same controversy. (*Panos v. Great Western Packing Co*. (1943) 21 Cal.2d 636, 637 [134 P.2d 242]; *Nakash v. Superior Court* (1987) 196 Cal.App.3d 59, 67-68 [241 Cal.Rptr. 578]; 7 Witkin, op. cit. supra, §§ 188, 190-192, pp. 621-627.) The most important criterion in determining that two suits concern the same controversy is whether they both arose from the same transactional nucleus of facts. (*Nakash*, *supra* at p. 68.) If so, the judgment in the first action is deemed to adjudicate for purposes of the second action every matter which was urged, and every matter which might have been urged, in support of the cause of action or claim in litigation. (*Panos v. Great Western Packing Co., supra*, at p. 638.) In sum, res judicata precludes parties from splitting a cause of action into a series of suits in piecemeal litigation, since it operates as a bar not only when the grounds for recovery in the second action are identical to those pleaded in the first but also where a different theory or request for relief is asserted. (*Mattson v. City of Costa Mesa, supra*, 106 Cal.App.3d at p. 446; *McNulty v. Copp* (1954) 125 Cal.App.2d 697, 705 [271 P.2d 90].)"

Hulsey, 218 Cal.App.3d at 1157.

In addition to the preclusive effect of the doctrine of res judicata on plaintiff's claim herein, she also is precluded by the doctrine of collateral estoppel from revisiting issues addressed by the Superior Court. See *Lucido v. Superior Court*, 51 Cal.3d 335, 341 (1990) (identifying requirements for issue preclusion under California law); *Bugna v. McArthur*, 33 F.3d 1054, 157 (9th Cir. 1994) (holding that federal courts must apply state law of collateral estoppel in determining collateral effect of state court judgment).

A description of the Superior Court dependency proceedings, orders, evidentiary findings and judgments are submitted under separate cover because the information contained therein is subject to a Superior Court disclosure protective order under Welfare and Institutions Code section 827.

This Court may take judicial notice of the state court proceedings because they are directly related to the matters at issue. *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803 fn. 2 (9th Cir. 2002). In considering the motion to dismiss, the court may rely upon matters judicially noticed. *MGIC Indemn. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986).

Plaintiff cannot use this District Court as a forum to revisit the orders and judgments of the Superior Court or the adequacy of the evidence upon which those orders and judgments were based. Plaintiff's amended complaint must be dismissed.

III

BECAUSE SMITH IS ABSOLUTELY IMMUNE FOR HER ROLE IN PROVIDING EVIDENCE IN COURT PLAINTIFF'S AMENDED COMPLAINT DOES NOT STATE A CLAIM AGAINST HER

Plaintiff's allegation against social worker Smith is that she allegedly gave false evidence against plaintiff in the juvenile court dependency proceeding. Plaintiff does not allege that Smith initiated the abuse investigation, or that Smith initiated plaintiff's arrest, or that Smith removed the children from the home, or that Smith commenced the dependency proceedings. That defendant Smith gave evidence against plaintiff in the dependency proceeding does not form a basis for a claim against her because she as with any other witnesses in a judicial proceeding is absolutely immune to section 1983 damage claims for her conduct as a trial witness. *Briscoe v. LaHue*, 460 U.S. 325, 336, 341 (1983). Also, like prosecutors who compile information after a preliminary hearing for presentation to the court during trial, Smith is absolutely immune from civil liability for any reporting and compilation of evidence she undertook to present to the court after the dependency proceedings had already commenced. *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976); *KRL v. Moore*, 384 F.3d 1105, 1110 (9th Cir. 2004). Plaintiff's allegation against Smith pertains to her conduct relative to the presentation of evidence to the court. Smith was therefore engaged in conduct "intimately associated with the judicial phase" of the dependency proceeding for which she has absolute immunity. *Id.*[1]

IV

BECAUSE PROCEEDINGS PERTAINING TO PLAINTIFF ARE STILL PENDING AND WOULD BE WITHIN THE EXCLUSIVE JURISDICTION OF THE SUPERIOR COURT THESE PROCEEDINGS SHOULD BE DISMISSED

It has long been established that federal courts do have jurisdiction over domestic relations matters, like divorce, and child custody matters. *Barber v. Barber*, 62 U.S. 582 (1859). Under California Welfare and Institutions Code sections 302(c), and 304, state courts have exclusive jurisdiction over the issues of child dependency. In this regard the Ninth Circuit Court of Appeals has even instructed that federal courts should decline jurisdiction of cases where the primary concerns pertain to the status of parent and child or husband and wife. *Peterson v. Babbit*, 708 F.2d 465, 466 (9th Cir. 1983). Moreover, dismissal would be appropriate because any constitutional issues bearing on the parent-child relations can be raised in the pending state court proceedings. *Id.* See also *Thompson v. Thompson*, 798 F.2d 1547, 1558 (9th Cir. 1986) aff'd. 484 U.S. 174 (1988). Dismissal is proper where a plaintiff "clothed her complaint in the garb of a civil rights action", but the claim "boils down to a demand for custody of the child." *Sutter v. Pitts*, 639 F.2d 842, 844 (1st Cir. 1981). The district court does not have jurisdiction to return the children to plaintiff over the orders of the juvenile court, which is the relief plaintiff actually seeks through this purported section 1983 action.

---

[1] *Beltran v. Santa Clara County*, 514 F.3d 906 (9th Cir. 2008), is not contrary because it only circumscribes social workers' entitlement to absolute immunity in those instances where the social worker signs and files the initial charging dependency petition affidavit purportedly containing knowingly false information. Smith is not alleged to have initiated the dependency petition.

Also, because plaintiff in her amended complaint alleges that after entering the stipulation for order on the custody of her children, a new dependency petition was brought against her that again pertains to the children's custody, Superior Court juvenile dependency are admittedly still pending. This federal court at least must abstain to allow the state Superior Court to adjudicate the issues pertaining thereto, which adjudication may make plaintiff's federal claim alleging familial interference moot. See *Younger v. Harris*, 401 U.S. 37, 49-53 (1971).

V

PLAINTIFF HAS IMPROPERLY ADDED NEW PARTY DEFENDANTS

Although federal pleading does not provide for fictitious defendant pleadings, the California pleading practice allowing new defendants to be named after the original complaint is filed is allowed under Federal Rule of Civil Procedure, rule 15 so long as the state fictitious defendant requirements for amendment are satisfied. *Merritt v. Co. Los Angeles*, 875 F.2d 765, 768 (9th Cir. 1989). To add a defendant in place of a fictitiously named defendant the plaintiff must be ignorant of the defendant's true name. *Id* at fn. 6. Here, plaintiff did not amend pursuant to Rule 15, and plaintiff has not represented to the court that she did not previously know the names of the new parties she has added in the amended complaint. Because the newly named defendants are her attorneys and social workers she dealt with during the Superior Court dependency proceedings it is unlikely that she could satisfy the ignorance of true name requirement. The amendment to add previously known persons as defendants is impermissible and should be disallowed stricken and dismissed.

CONCLUSION

Plaintiff's amended complaint should be dismissed because it is barred by the Rooker-Feldman Doctrine, the full faith and credit clause, res judicata, collateral estoppel, because Julie Smith is absolutely immune for her conduct as a witness providing evidence in the juvenile court proceedings, and because the state court holds exclusive jurisdiction over plaintiff's claims to custody of her children.

DATED: June 18, 2008

Respectfully submitted,

JOHN J. SANSONE, County Counsel

By: s/ RICKY R. SANCHEZ, Senior Deputy
Attorneys for Defendant Julie Smith
E-mail: ricky.sanchez@sdcounty.ca.gov